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MAY 19 2022

1 Michael L. Rabb (# 13734)  
2 Kristen L. Corn (#64623324)  
3 THE RABB LAW FIRM, PLLC  
4 3950 Valley Commons Drive, Suite 1  
5 Bozeman, MT 59718  
6 Telephone: (406) 404-1747  
7 Facsimile: (406) 551-6847  
8 Email: service@therabbblawfirm.com

9 *Attorneys for Plaintiffs*

10 MONTANA'S EIGHTEENTH JUDICIAL DISTRICT, GALLATIN COUNTY

11 JULIA HALL and JAMES HALL, a married  
12 couple;

13 Plaintiffs,

14 vs.

15 RESTORE MONTANA, LLC a Montana Domestic  
16 Limited Liability Company; RESTORE  
17 FRANCHISING, LLC, a Texas Limited Liability  
18 Company; TOD PIERSON WORK, an individual;  
19 ABC CORPORATIONS 1-10; and DOES 1-10;

20 Defendants.

CASE NO.: DV-22-387A

FIRST AMENDED COMPLAINT FOR  
DAMAGES

21 Plaintiffs, Julia Hall and James Hall, by and through their undersigned counsel, pursuant to  
22 Montana Rule of Civil Procedure 15(a)(1), and for their causes of action against Defendants Restore  
23 Montana, LLC ("Restore MT"), Restore Franchising, LLC ("Restore Franchising"), Tod Pierson Work  
24 ("Work"), ABC Corporations 1-10 and Does 1-10 (collectively referred to as "Defendants"), hereby  
25 amend their complaint and allege as follows:

PARTIES

- 26 1. Plaintiff Julia Hall is a resident of Gallatin County, Montana.
- 27 2. Plaintiff James Hall is a resident of Gallatin County, Montana.
- 28 3. At all times alleged herein, Plaintiff James Hall was, and is, married to Julia Hall.

1           4.     At all times alleged herein, Defendant Restore MT was doing business in Montana with  
2 its principal place of business in Gallatin County, Montana.

3           5.     Defendant Restore MT is not a licensed Health Care Facility under Title 50, chapter 5 of  
4 the Montana Code.

5           6.     At all times alleged herein, Defendant Restore Franchising availed itself of the privileges  
6 of doing business in Montana by, among other things, entering into a franchise agreement with  
7 Defendant Restore MT and deriving profit from Defendant Restore MT's business operations in Gallatin  
8 County, Montana.

9           7.     At all times alleged herein, Defendant Work personally availed himself of the privileges  
10 of doing business in Montana by, among other things, participating in Defendant Restore MT's business  
11 operations in Gallatin County, Montana, and by deriving profit from Restore MT's business operations  
12 in Gallatin, County Montana.

13           8.     Defendant Work is not a "Physician" as defined in Montana Code §27-6-103(7).

14           9.     At the time this Complaint was filed, Plaintiffs were ignorant of the true names and  
15 capacities of Does 1-10 and ABC Corporations 1-10, and therefore they sue these Defendants by such  
16 fictitious names. Plaintiffs are informed and believe, and thereon allege, that each of these fictitiously  
17 named Defendants are liable or responsible in some manner to Plaintiffs for the damages alleged.  
18 Plaintiffs will amend this Complaint to allege Does 1-10's and ABC Corporations 1-10's true names and  
19 capacities when the same are ascertained.

20           10.    Plaintiffs are informed and believe, and on that basis allege, that at all times herein each  
21 of the Defendants, including those sued as ABC Corporations 1-10 and Does 1-10, were acting as the  
22 agent, servant, partner, joint venturer, and/or employee of their co-Defendants, and were acting within  
23 the scope of that authority with the full knowledge, permission, and express or implied consent of each  
24 of the remaining Defendants.

25                                   **JURISDICTION & VENUE**

26           11.    Plaintiffs re-allege, and incorporate by this reference, each and every allegation in the  
27 preceding paragraphs.

28           12.    Montana has jurisdiction over the Defendants, and each of them.

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**Abstract**

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1           23. On or about April 28, 2021, Plaintiff Julia visited Defendant Restore MT's Bozeman  
2 Facility for "TV therapy".

3           24. During the April 28, 2021, visit Plaintiff Julia had a consultation with Defendant Work  
4 regarding the "TV therapy" only, and received the "TV therapy".

5           25. On May 4, 2021, Plaintiff visited Defendant Restore MT's Bozeman Facility for an  
6 intramuscular injection and a full-body cryotherapy session.

7           26. Defendant Restore MT never had a licensed medical professional conduct a pre-  
8 cryotherapy consultation with Plaintiff Julia prior to the May 4, 2021 cryotherapy session.

9           27. After Plaintiff Julia received the intramuscular injection, McKenzie Schmitt escorted  
10 Plaintiff Julia to a dressing room to prepare for her cryotherapy session.

11           28. After Plaintiff Julia was placed in the dressing room, Plaintiff Julia put on the robe,  
12 protective headwear and handwear that were provided by Defendant Restore MT.

13           29. Plaintiff Julia exited the dressing room and McKenzie Schmitt then knelt to Plaintiff  
14 Julia's calf and took Plaintiff Julia's temperature on her calf.

15           30. Prior to placing Plaintiff Julia in the cryotherapy chamber McKenzie Schmitt never  
16 advised Plaintiff Julia that she was missing the Defendant Restore MT's necessary protective footwear.

17           31. McKenzie Schmitt then informed Plaintiff Julia that when she entered the cryotherapy  
18 chamber a clock would be on the wall and music would be playing.

19           32. McKenzie Schmitt advised Plaintiff Julia that she would be able to exit the cryotherapy  
20 chamber when the music stopped.

21           33. McKenzie Schmitt never advised Plaintiff Julia how to stop the cryotherapy session in  
22 the event of an emergency.

23           34. McKenzie Schmitt also never performed a safety check prior to placing Plaintiff Julia in  
24 the cryotherapy chamber.

25           35. Plaintiff Julia was then placed into the cryotherapy chamber and McKenzie Schmitt  
26 closed the door.

27           36. Plaintiff Julia was engulfed in a thick white haze that blinded her to the surroundings,  
28 including the interior walls of the chamber, the window, and the clock.

1           37.     The interior of the cryotherapy chamber began cooling from the floor and music began  
2 to play.

3           38.     Plaintiffs are informed and believe and thereon allege that the cryotherapy chamber  
4 temperatures can reach as low as negative two-hundred- and sixty-six-degrees Fahrenheit.

5           39.     When the floor began cooling, Plaintiff Julia immediately began feeling a burning  
6 sensation on the bottom of both feet.

7           40.     To minimize the contact between her feet and the subzero floor of the cryotherapy  
8 chamber, Plaintiff Julia started transitioning between her tiptoes and the flat of her foot, which she  
9 continued for the duration of the session.

10          41.     Plaintiff Julia had been in the cryotherapy chamber for approximately two minutes and  
11 forty-five seconds when the music stopped, and the door opened.

12          42.     Upon exiting the chamber, Plaintiff Julia immediately informed McKenzie Schmitt that  
13 something was seriously wrong with the bottom of her feet.

14          43.     For the first time, McKenzie Schmitt noticed that Plaintiff Julia was not wearing  
15 Defendant Restore MT's necessary protective footwear.

16          44.     McKenzie Schmitt did not question Plaintiff Julia further about the complaints she was  
17 experiencing in her feet, nor did she request any medical attention be provided to Julia.

18          45.     McKenzie Schmitt escorted Plaintiff Julia back to the dressing room, where she left her  
19 unattended.

20          46.     Plaintiff Julia immediately contacted her husband Jim letting him know she needed him  
21 to come to Defendant Restore MT's Bozeman Facility as soon as possible.

22          47.     Plaintiff Julia remained alone in the dressing room for the next 20 minutes without any  
23 member of Defendant Restore MT's staff inquiring as to her well-being.

24          48.     It was only after Jim arrived at the Bozeman Facility that Julia was removed from the  
25 dressing room and brought to the front of the facility where Jim was waiting for her.

26          49.     While at the front desk, Plaintiff Julia was finally asked if she wanted to see the on-site  
27 nurse, Skyler Hochstein.

28          50.     Plaintiff Julia was taken back to see Skyler Hochstein, who looked at Plaintiff Julia's feet

1 and advised her to simply go home and “keep an eye on it.”

2 51. Plaintiff followed the advice provided by Skyler Hochstein and went home for the night.

3 52. Defendant Work never saw or spoke with Plaintiff Julia after her cryotherapy chamber  
4 session.

5 53. Plaintiff Julia presented to the Bozeman Deaconess Emergency Department the following  
6 day and was diagnosed with severe frostbite to the bottom of both feet.

7 54. While Plaintiff Julia was in the Emergency Department at Bozeman Deaconess on May  
8 5, 2021, Defendant Restore MT was celebrating its “Grand Opening” for the Bozeman Facility.

9 55. Defendant Restore MT’s May 4, 2021 “Patient Chart” notes for Plaintiff Julia do not  
10 reference the cryotherapy treatment session for that date.

11 56. Defendant Restore MT invited Plaintiff Julia to return to the Bozeman Facility on May 6,  
12 2021, claiming it wanted to help her.

13 57. On May 6, 2021, Plaintiff Julia returned to the Bozeman Facility.

14 58. On May 6, 2021, for the first time, notes concerning the cryotherapy session were  
15 recorded in Defendant Restore MT’s “Patient Chart” for Plaintiff Julia.

16 59. The May 6, 2021 notes contained self-serving statements that served no other purpose.

17 60. The May 6, 2021 notes were purportedly authored by Defendant Work who never spoke  
18 with or saw Plaintiff Julia following the May 4, 2021 cryotherapy chamber session.

19  
20 **CAUSE OF ACTION I: NEGLIGENCE / GROSS NEGLIGENCE**  
(Plaintiff Julia Against All Defendants)

21 61. Plaintiffs re-allege, and incorporate by this reference, each and every allegation in the  
22 preceding paragraphs.

23 62. Defendants owed a duty to Plaintiff Julia to use reasonable care under the circumstances.

24 63. The standard of care required to be exercised by Defendant Restore Franchising when  
25 providing the means and mechanisms for Defendant Restore MT to safely offer cryotherapy to clients,  
26 includes, among other things:

- 27 a. Providing the proper placement of, and/or resources to ensure Defendant Restore  
28 MT’s hiring of, qualified individuals;

- b. Providing proper and adequate training on the administration of cryotherapy services;
- c. Providing proper and adequate training on how to respond to injuries sustained during cryotherapy services;
- d. Providing proper and adequate training on safety protocols related to cryotherapy services;
- e. Providing proper and adequate training on how to identify and hire qualified individuals to administer cryotherapy services and first aid; and
- f. Providing appropriate oversight to allow Defendant Restore MT to safely and properly administer cryotherapy services to its clients; and
- g. Establishing appropriate protocols and procedures for its franchisees to follow in response to reported injuries caused by cryotherapy.

64. Defendant Restore Franchising failed to adhere to the foregoing standards of care, thereby breaching its duty owed to Plaintiff Julia when it, among other things:

- a. Failed to provide the proper placement of, and/or resources to ensure Defendant Restore MT hired, qualified individuals;
- b. Failed to provide proper and adequate training to Defendant Restore MT on how to administer cryotherapy services;
- c. Failed to provide proper and adequate training to Defendant Restore MT on how to respond to injuries sustained during cryotherapy services;
- d. Failed to provide proper and adequate training to Defendant Restore MT on safety protocols related to cryotherapy services; and
- e. Failed to provide proper and adequate training on how to identify and hire qualified individuals to administer cryotherapy services and first aid; and
- f. Failed to provide appropriate oversight to allow Defendant Restore MT to safely and properly administer cryotherapy services to its clients; and
- g. Failed to establish appropriate protocols and procedures for its franchisees to follow in response to reported injuries caused by cryotherapy.

65. The standard of care required to be exercised by Defendant Restore MT, when placing its

1 clients into an enclosed chamber that reaches temperatures as low as -260 degrees Fahrenheit, includes,  
2 among other things, to:

- 3 a. Ensure that necessary protective coverings are provided to its clients, including  
4 Plaintiff Julia, prior to placing them in the chamber;  
5 b. Ensure that its clients, including Plaintiff Julia, are wearing the necessary protective  
6 coverings before placing them in the chamber;  
7 c. Provide its clients, including Plaintiff Julia, with information on dangerous physical  
8 sensations that, if they were to occur at any time during the cryotherapy treatment,  
9 would signal the onset of an injury;  
10 d. Provide its clients, including Plaintiff Julia, with instructions on how to stop the  
11 cryotherapy session in the event of injury or an emergency;  
12 e. Provide its clients, including Plaintiff Julia, with instructions on how to exit the  
13 chamber in the event of injury or an emergency;  
14 f. Provide its clients, including Plaintiff Julia, with appropriate and timely first aid if  
15 injury is sustained as a result of the cryotherapy session; and  
16 g. Establish protocols and procedures for its staff to follow in response to reported  
17 injuries caused by cryotherapy.

18 66. Defendant Restore MT failed to adhere to the foregoing standards of care, thereby  
19 breaching its duty owed to Plaintiff Julia when it, among other things:

- 20 a. Failed to provide Plaintiff Julia with the necessary protective foot coverings prior to  
21 entering the chamber;  
22 b. Failed to ensure that Plaintiff Julia was wearing the necessary protective foot  
23 coverings before placing her in the chamber;  
24 c. Failed to provide Plaintiff Julia with information on dangerous physical sensations  
25 that, if they were to occur at any time during the cryotherapy treatment, would signal  
26 the onset of an injury;  
27 d. Failed to provide Plaintiff Julia with instructions on how to stop the cryotherapy  
28 session in the event of injury or an emergency;

- e. Failed to provide Plaintiff Julia with instructions on how to exit the chamber in the event of injury or an emergency;
- f. Failed to provide plaintiff Julia with appropriate and timely first aid in response to injuries suffered as a result of the cryotherapy session; and
- g. Failed to establish, or follow, protocols and procedures in response to a reported injury caused by cryotherapy.

67. Defendant Restore MT's conduct constituted gross negligence when, among other things, McKenzie Schmitt, while taking Plaintiff Julia's temperature on her lower calf, failed to recognize that Plaintiff Julia was not wearing the required protective footwear before she placed her in the chamber.

68. Defendant Retore MT had knowledge of facts and intentionally disregarded those facts thereby creating a high probability of injury to Plaintiff Julia when it, among other things:

- a. Failed to respond to Plaintiff Julia's report of injuries upon her exit from the chamber;
- b. Failed to provide first aid addressing Plaintiff Julia's injuries;
- c. Failed to instruct Plaintiff Julia to obtain medical attention for her injuries; and
- d. Instructed Plaintiff Julia only to "go home and keep an eye on it."

69. Defendant Restore MT recognized that its conduct was so egregious that it took malicious actions to minimize the appearance of its culpability by, among other things, inviting Plaintiff Julia back to the Bozeman Facility under the guise of wanting to help her, but with the intention of using the opportunity to create false and self-serving entries in records that served no purpose related to the service provided at that time.

70. The standard of care required to be exercised by Defendant Work to clients of Restore MT contemplating or proceeding with cryotherapy services, including Plaintiff Julia, includes, among other things, that he:

- a. Discuss with clients, including Plaintiff Julia, the potential risks of cryotherapy treatment prior to the client undergoing the treatment;
- b. Discuss with clients, including Julia Hall, the importance of wearing the required protective head, hands, and footwear in order to avoid serious injury from the cryotherapy;

- c. Inform and alert clients, including Plaintiff Julia, as to any physical changes or sensations that, if they were to occur at any time during or after the cryotherapy session, would signal the onset of an injury;
- d. Inform clients, including Plaintiff Julia, as to how to exit the chamber in the event of an emergency or injury; and
- e. Timely communicate with Restore MT staff, as well as follow up with the client, including Plaintiff Julia, after learning of an injury sustained by the client as a result of the cryotherapy session.

71. Defendant Work failed to adhere to the foregoing standards of care, thereby breaching his duty owed to Plaintiff Julia when he, among other things:

- a. Failed to consult with Plaintiff Julia prior to the May 4<sup>th</sup> cryotherapy session, regarding the cryotherapy appointment as to what to expect and any potential risks associated with cryotherapy, such as frostbite.
- b. Failed to discuss with Plaintiff Julia the importance of wearing the required protective head, hands, and footwear in order to avoid serious injury from cryotherapy;
- c. Failed to alert or inform Plaintiff Julia as to physical sensations or changes that, if they were to occur at any time during or after the cryotherapy session, would signal the onset of an injury;
- d. Failed to instruct or inform Plaintiff Julia as to how to exit the cryotherapy chamber in the event of an emergency or injury; and
- e. Failed to timely communicate with Restore MT staff and/or Plaintiff Julia after learning of the injuries she sustained during and as a result of the cryotherapy session on May 4, 2021.

72. As a direct and proximate result of the Defendants' conduct Plaintiff Julia has suffered injuries and damages.

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth in the Prayer for Relief below.

**CAUSE OF ACTION II: LOSS OF CONSORTIUM**  
(James Hall Against All Defendants)

73. Plaintiffs re-allege, and incorporate by this reference, each and every allegation in the preceding paragraphs.

74. On May 4, 2021, Plaintiffs were validly and lawfully married.

75. Plaintiff Julia suffered personal injuries that were proximately caused by Defendants' conduct.

76. As a result of Plaintiff Julia's injuries, Plaintiff James has suffered a loss of consortium that was proximately caused by Defendants' conduct.

WHEREFORE, Plaintiff James prays for judgment against Defendants, and each of them, as set forth in the Prayer for Relief below.

**PRAYER**

WHEREFORE, Plaintiffs pray for relief as follows:

1. For judgment against all Defendants and in favor of Plaintiffs;
2. For an award of damages to Plaintiffs in an amount to be proven at trial;
3. For general and special damages in Plaintiff Julia's favor and in a sum to be determined at trial;
4. For punitive damages as permitted under each cause of action;
5. For loss of consortium damages in Plaintiff James' favor and in a sum to be determined at trial;
6. For reasonable attorneys' fees as permitted by law;
7. For pre-judgment and post-judgment interest, as well as expert witness fees and other costs; and
8. For such other relief as this Court deems just and appropriate.

Dated: April 27, 2022

  
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MICHAEL L. RABB  
Attorney for Plaintiffs

Judge Peter B. Ohman  
Department 1

REST  
MAY 13 2022

MONTANA'S EIGHTEENTH JUDICIAL DISTRICT, GALLATIN COUNTY

JULIA HALL and JAMES HALL, a married  
couple;

Plaintiffs,

vs.

RESTORE HYPER WELLNESS MT, PLLC, a  
Montana Domestic Limited Liability Company;  
RESTORE FRANCHISING, LLC, a Texas Limited  
Liability Company; TOD PIERSON WORK, an  
individual; ABC CORPORATIONS 1-5; and  
DOES 1-5;

Defendants.

CASE NO.: DV-22-387A

SUMMONS — RESTORE FRANCHISING,  
LLC

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT:

RESTORE FRANCHISING, LLC

YOU ARE HEREBY SUMMONED to answer the Complaint in this action which is filed in  
the office of the above-named Court, a copy of which is herewith served upon you, and to file your  
answer and serve a copy thereof upon Plaintiff's attorney within 21 days after service of this Summons,  
exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken  
against you by default, for the relief demanded in the Complaint.

GIVEN under my hand this 15th day of April 2022.

SANDY ERHARDT

CLERK OF DISTRICT COURT

By: *Ma Ohman, Deputy Clerk*